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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTION OF USACM
TRUST TO PROOFS OF CLAIM
BASED UPON INVESTMENT IN
THE BUNDY CANYON (\$5.725
MILLION) LOAN**

Hearing Date: August 30, 2011

Hearing Time: 10:30 a.m.

Estimated Time for Hearing: 10 minutes

I, Geoffrey L. Berman, declare under penalty of perjury:

1. I am an adult person competent to testify in court.

2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.

3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as “Bundy Canyon Land Development, LLC.” A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The Offer Sheet stated that the Borrower was a joint venture between USA Investment Partners and three individuals, Dave Fogg,¹ Chris Pederson, and Kevin Everett. *Id.* The total loan amount proposed was \$5,725,000. *Id.* The Offer Sheet described the investment as a “First Trust Deed Investment” and noted that the investment would be secured by a first deed of trust on approximately 60.25 acres of property to be developed into approximately 229 lots, located on Bundy Canyon Road in Riverside County, California near the city of Murietta. *Id.* The loan to value ratio was 49% based on the sell out price for the approved mapped lots.² *Id.*

5. On January 14, 2005, Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust” (the “Note”) and a Loan Agreement. The Note and Loan Agreement provided for a loan of up to \$5,725,000, with an initial loan in the amount of \$1,500,000. *Id.* Pursuant to the Loan Agreement, the loan was intended to acquire the real property and to pay costs of obtaining certain entitlements. *Id.* The Note was secured by a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing” (the “Deed of Trust”) from the Borrower in favor of the Direct Lenders that was recorded in the official records of Riverside County, California on January 19, 2005 at Instrument Number 20050362, as were subsequent amendments to the Deed of Trust to secure subsequent loan advances.

¹ David Fogg’s involvement in the transfer of funds between the USA Capital Diversified Trust Deed Fund and USA Investment Partners was addressed in separate litigation. That litigation was settled and which settlement was approved by this Court.

² The Trustee has been unable to locate an appraisal for this loan and it does not appear that one was ever obtained.

6. The Note was also supported by a guaranty from Tom Hantges and Joseph Milanowski.

7. The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows that Borrower was “Performing” on the Note as of July 31, 2006 because the dispersing agent held sufficient cash to make interest payments. Pursuant to the USACM “Loan Summary” dated February 28, 2007 and filed in this case, the Borrower was in “Maturity Default” as of February 28, 2007. During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court’s orders and the confirmed Plan.

8. Because the Borrower included USA Investment Partners L.P., an affiliate of USACM, I believe there was the potential for a conflict of interest in the manner in which USACM brokered and serviced this loan.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 26, 2011

/s/ Geoffrey L. Berman

Geoffrey L. Berman

Copy of the foregoing mailed (without Exhibits) by first class postage prepaid U.S. Mail on July 26, 2011 to All investors listed on Exhibit A Attached.

s/ Matt Burns

Matt Burns, Paralegal